

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ERIC JACKSON, *et. al.*,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS,
Secretary of Homeland Security, *et al.*,

Defendants.

Case No. 4:22-cv-0825-P

APPENDIX TO DEFENDANTS' MOTION TO DISMISS

CONTENTS

| Document | Bates Number |
|---|--------------|
| Sec'y of Def. Mem. (Jan. 10, 2023) | 001 |
| ALCOAST 012/23 (Jan. 11, 2023) | 003 |
| ALCGENL 013/23 (Jan. 25, 2023) | 004 |
| ALCGOFF 005/23 (Jan. 26, 2023) | 006 |
| Dep. Sec'y of Def. Mem. (Feb. 24, 2023) | 007 |
| ALCGPSC 024/23 (Feb. 27, 2023) | 006 |

* * *

Dated: March 10, 2023

Respectfully submitted,

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JAN 10 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019
Vaccination Requirements for Members of the Armed Forces

I am deeply proud of the Department's work to combat the coronavirus disease 2019 (COVID-19). Through your leadership, we have improved the health of our Service members and the readiness of the Force, and we have provided life-saving assistance to the American people and surged support to local health care systems and agencies at all levels of government. The Department has helped ensure the vaccination of many Americans, while simultaneously providing critical and timely acquisition support for life-saving therapeutics, tests, and treatments for COVID-19. We have demonstrated the ability to support and defend the Nation under the most trying of circumstances.

The Department will continue to promote and encourage COVID-19 vaccination for all Service members. The Department has made COVID-19 vaccination as easy and convenient as possible, resulting in vaccines administered to over two million Service members and 96 percent of the Force — Active and Reserve — being fully vaccinated. Vaccination enhances operational readiness and protects the Force. All commanders have the responsibility and authority to preserve the Department's compelling interests in mission accomplishment. This responsibility and authority includes the ability to maintain military readiness, unit cohesion, good order and discipline, and the health and safety of a resilient Joint Force.

On December 23, 2022 the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 was enacted. Section 525 of the NDAA for FY 2023 requires me to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19, issued in my August 24, 2021 memorandum, "Mandatory Coronavirus Disease 2019 Vaccination of Department of Defense Service Members." I hereby rescind that memorandum. I also hereby rescind my November 30, 2021 memorandum, "Coronavirus Disease 2019 Vaccination for Members of the National Guard and the Ready Reserve."

No individuals currently serving in the Armed Forces shall be separated solely on the basis of their refusal to receive the COVID-19 vaccination if they sought an accommodation on religious, administrative, or medical grounds. The Military Departments will update the records of such individuals to remove any adverse actions solely associated with denials of such requests, including letters of reprimand. The Secretaries of the Military Departments will further cease any ongoing reviews of current Service member religious, administrative, or medical accommodation requests solely for exemption from the COVID-19 vaccine or appeals of denials of such requests.

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of Federal law. Service members have the right to observe the tenets of their religion or to observe no religion at all, as provided in applicable Federal law and Departmental policy. Components shall continue to apply the uniform standards set forth in DoD Instruction 1300.17, "Religious Liberty in the Military Services."

Other standing Departmental policies, procedures, and processes regarding immunizations remain in effect. These include the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, including when vaccination is required for travel to, or entry into, a foreign nation.

For Service members administratively discharged on the sole basis that the Service member failed to obey a lawful order to receive a vaccine for COVID-19, the Department is precluded by law from awarding any characterization less than a general (under honorable conditions) discharge. Former Service members may petition their Military Department's Discharge Review Boards and Boards for Correction of Military or Naval Records to individually request a correction to their personnel records, including records regarding the characterization of their discharge.

The Under Secretary of Defense for Personnel and Readiness shall issue additional guidance to ensure uniform implementation of this memorandum, as appropriate.

The Department's COVID-19 vaccination efforts will leave a lasting legacy in the many lives we saved, the world-class Force we have been able to field, and the high level of readiness we have maintained, amidst difficult public health conditions. Our efforts were possible due, first and foremost, to the strength and dedication of our people. I remain profoundly grateful to the men and women of the Department of Defense for their efforts to protect our Force, the Department of Defense community, and to aid the American people.

A handwritten signature in black ink, appearing to read "Mark P. Daulton". The signature is stylized with a large, looped 'M' and a cursive 'D'.

R 111557Z JAN 23

FM COMDT COGARD WASHINGTON DC

TO ALCOAST

BT

UNCLAS

ALCOAST 012/23

SSIC 1600

SUBJ: COVID-19: MANDATING COVID-19 VACCINATION FOR MILITARY MEMBERS UPDATE

A. COMDT COGARD WASHINGTON DC 262212Z AUG 21/ALCOAST 305/21

B. COMDT COGARD WASHINGTON DC 072247Z SEP 21/ALCOAST 315/21

1. The President signed the National Defense Authorization Act (NDAA) for Fiscal Year 2023 on December 23, 2022, which includes a provision directing the Secretary of Defense to rescind the mandate that members of the Armed Forces be vaccinated against COVID-19. The Department of Defense (DOD) rescinded its mandate on January 10, 2023.

2. In alignment with the DOD, REFs (A) and (B) are cancelled. Effective immediately, the Coast Guard is stopping all involuntary administrative separations that resulted from violations of the lawful general orders to become vaccinated against COVID-19 included within REFs (A) and (B).

3. Further guidance on other administrative actions, including PCS and TDY transfer policies for unvaccinated members, is forthcoming.

4. Questions regarding this ALCOAST may be directed to Office of Military Personnel Policy (CG-133) at: HQS-PolicyandStandards@uscg.mil.

5. ADM Steven Poulin, Vice Commandant (VCG), sends.

6. Internet release is not authorized.

R 252057Z JAN 23 MID200080683568U

FM COMCOGARD PSC WASHINGTON DC

TO ALCGENL

BT

UNCLAS

ALCGENL 013/23

SUBJ: RESCISSION OF COVID-19 VACCINATION MANDATE - INITIAL GUIDANCE FOR ACTIVE DUTY ENLISTED MEMBERS

A. ALCOAST 012/23

B. Enlistments, Evaluations, and Advancements, COMDTINST M1000.2 (series)

C. ALCGPSC 012/23

D. ALCGPSC 016/22

E. ALCGPSC 104/21

1. Purpose: Reference A. prohibits the involuntary administrative separation of members based solely on their refusal of the COVID-19 vaccination. Consistent with the intent of reference A. and in consideration of processes governing active duty enlisted assignments and advancements, this ALCGENL provides initial guidance to commands with particular focus on retaining unvaccinated members, facilitating their participation in Assignment Year 2023 (AY23), and preserving their advancement eligibility. Additional guidance will be promulgated when available.

2. Retention.

A. CG PSC-EPM contacted all members with unexecuted Separation Authorizations (SEPAUTHs) based solely on their refusal of the COVID-19 vaccination to inform them that they will no longer be separated, barring a separate request for voluntary separation from the member. Commands who believe they have a member issued a SEPAUTH based solely on their refusal of the COVID-19 vaccination who has not been contacted by CG PSC-EPM should immediately contact CG PSC-EPM-1 (Separations) at HQS-SMB-CGPSC-EPM-1-Separations@uscg.mil.

B. Over 200 involuntary administrative separation packages based solely on a member's refusal of the COVID-19 vaccination pend final disposition. CG PSC-EPM will return all involuntary administrative separation packages based solely on a member's refusal of the COVID-19 vaccination to the originating command with no action taken.

C. Documentation of a member's failure to comply with COVID-19 vaccination mandate alone will not render the member ineligible to reenlist or extend. All other reenlistment and extension requirements contained in reference B. remain applicable.

3. Assignments.

A. Reference C. cancels all assignment, boards and panels, and training restrictions imposed by references D. and E.

B. Members who remain unvaccinated against COVID-19 are no longer prohibited from executing Permanent Change of Station orders.

C. Members who are tour complete in AY23 and who remain unvaccinated against COVID-19 are encouraged to contact their Assignment Officer for career counseling if they have not done so already.

4. Advancements.

A. A member's refusal of the COVID-19 vaccination alone does not require the withholding of advancement. Commands withholding the advancement of members on the 2023 Advancement Eligibility List based solely on the member's refusal of the COVID-19 vaccination shall remove the withholding and CG PSC-EPM will authorize advancement via a future Enlisted Personnel Advancement Announcement.

B. Members whose advancement was withheld on the now expired 2022 Advancement Eligibility List are encouraged to compete in the 2023 SWE or Master Chief Advancement Panel (MCAP) if they meet all other advancement eligibility requirements.

C. Commands having awarded a mark of "Not Recommended" based solely on a member's refusal of the COVID-19 vaccination shall submit a Commanding Officer's Recommendation Change (CORC) Enlisted Employee Review (EER) to ensure the member's eligibility to compete in the 2023 SWE or MCAP.

D. Reference B. contains guidance on removing the withholding of advancement and submitting CORC EERs. Commands seeking additional clarity on policies governing EERs may submit an email to HQS-SMB-CGPSC-EPM-3-Evaluations@uscg.mil.

E. Commands are reminded that the SWE and MCAP Eligibility Date for participation in the 2023 SWE and MCAP is 01 February 2023.

F. Members must report any Personnel Data Extract (PDE) discrepancies to their administrative office or SPO and verify the online PDE reflects a status of "eligible." If the online PDE is not correct, contact PPC (ADV) prior to the PDE correction period deadline. The correction period deadline for the May 2023 SWE is 01 April 2023. All EER CORCs must be submitted to EPM-3 on or before 01 April 2023 with an effective date of 1 February 2023. Given the proximity of SWE and MCAP Eligibility Date and the PDE correction period, commands are encouraged to engage with the CG PSC-EPM-1 Advancement Branch early if they believe more time is needed to meet advancement eligibility requirements. Commands seeking additional clarity on policies governing advancement eligibility may submit an email to HQS-SMB-CGPSC-EPM-1-Advancements@uscg.mil.

5. Commands with questions or concerns regarding this guidance should be directed to the POCs below:

A. Separations/Reenlistments: CAPT(s) Evelyn Samms at Evelynn.B.Samms@uscg.mil or (202) 795-6565.

B. Assignments: CAPT(s) Tony Migliorini at Anthony.R.Migliorini@uscg.mil or (202) 795-6596.

C. Evaluations: CDR(s) La'Shanda Hawkins at Lashanda.R.Hawkins@uscg.mil or (202) 795-6388.

6. CAPT J. A. Carter, Chief, Enlisted Personnel Management Division, CG Personnel Service Center, sends.

7. Internet release not authorized.

261329Z JAN 23 MID200080685332U

ALCGOFF 005/23

SUBJ: RESCISSION OF COVID-19 VACCINATION MANDATE – GUIDANCE FOR ACTIVE DUTY OFFICERS

A. ALCOAST 012/23

B. OFFICER ACCESSIONS, EVALUATIONS, AND PROMOTIONS, COMDTINST M1000.3 (series)

C. ALCGPSC 012/23

D. ALCGPSC 016/22

E. ALCGPSC 104/21

1. Purpose: Ref A. prohibits the involuntary administrative separation of members based solely on their refusal of the COVID-19 vaccination. Consistent with the intent of ref A., this ALCGOFF provides guidance to units and the officer corps.

2. CG PSC-OPM contacted all officers pending board action to consider involuntary separation based solely on their refusal of the COVID-19 vaccination and notified them that the pending board action has been cancelled. Officers who elected to separate in lieu of board action have also been contacted and separations based solely on their refusal of the COVID-19 vaccination have been cancelled. Any officer who was issued a notification of intent to initiate board action based solely on their refusal of the COVID-19 vaccination and has not been contacted by CG PSC-OPM should immediately contact CG PSC-OPM-1 (Separations) at HQS-SMB-PSC-OPM-1-Separations@uscg.mil.

3. Assignments:

A. Ref C. cancels all assignment and training restrictions imposed by refs D. and E.

B. Members who remain unvaccinated against COVID-19 are no longer prohibited from executing Permanent Change of Station orders.

C. Members who had a pending separation in lieu of special board action for remaining unvaccinated against COVID-19 are encouraged to contact their Assignment Officer for career counseling regarding Assignment Year 2023.

4. Any future actions stemming from ref A. will be announced and promulgated SEPCOR.

5. Commands with questions or concerns regarding this guidance should be directed to the POCs below:

A. Boards, Promotions, and Separations: CDR David Ratner at David.W.Ratner@uscg.mil or (202) 795-6438.

B. Assignments: CDR Todd Behney at Todd.M.Behney@uscg.mil or (202) 795-6425.

C. OERs: CDR Kellee Nolan at Kellee.M.Nolan@uscg.mil or (202) 795-6468.

6. CAPT P. J. Dougan, Chief, Officer Personnel Management Division, CG Personnel Service Center, sends.

7. Internet release not authorized.



FEB 24 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Guidance for Implementing Rescission of August 24, 2021 and November 30, 2021
Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed
Forces

In today's rapidly changing global security environment, vaccines continue to play a critical role in assuring a ready and capable force that is able to rapidly deploy anywhere in the world on short notice. Department leadership is committed to ensuring the safety of our Service members and will continue to promote and encourage vaccinations for all Service members along with continued use of other effective mitigation measures. This includes monitoring changing public health conditions, relevant data, and geographic risks; and updating policies and processes as required to maintain the strategic readiness of our forces and our ability to defend national security interests around the globe.

This memorandum provides additional guidance to ensure uniform implementation of Secretary of Defense Memorandum, "Rescission of the August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces," January 10, 2023 (January 10, 2023 memorandum).

As required by section 525 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, the January 10, 2023 memorandum rescinded the August 24, 2021 and November 30, 2021 Secretary of Defense mandates that members of the Armed Forces be vaccinated against the coronavirus disease 2019 (COVID-19) and thereby also rendered all DoD Component policies, directives, and guidance implementing those vaccination mandates as no longer in effect as of January 10, 2023. These include, but are not limited to, any COVID-19 vaccination requirements or related theater entry requirements and any limitations on deployability of Service members who are not vaccinated against COVID-19.

DoD Component policies, directives, and guidance have not been operative since the January 10, 2023 memorandum was issued, regardless of the status of the DoD Component conforming guidance. DoD Component heads shall formally rescind any such policies, directives, and guidance as soon as possible, if they have not done so already. DoD Component heads shall certify to the Under Secretary of Defense for Personnel and Readiness in writing that these actions have been completed no later than March 17, 2023.

The January 10, 2023 memorandum recognizes that other standing Departmental policies, procedures, and processes regarding immunizations remain in effect, including the ability of commanders to consider, as appropriate, the individual immunization status of personnel in making deployment, assignment, and other operational decisions, such as when vaccination is



required for travel to, or entry into, a foreign nation. This continues to be the case, in accordance with the guidance below.

The Department's Foreign Clearance Guide will be updated to reflect that DoD personnel must continue to respect any applicable foreign nation vaccination entry requirements, including those for COVID-19. Other than to comply with DoD Foreign Clearance Guidance, DoD Component heads and commanders will not require a Service member or group of Service members to be vaccinated against COVID-19, nor consider a Service member's COVID-19 immunization status in making deployment, assignment, and other operational decisions, absent establishment of a new immunization requirement in accordance with the process described below. It is my expectation that any requests to the Assistant Secretary of Defense for Health Affairs (ASD(HA)) for approval to initiate mandatory immunizations of personnel against COVID-19 will be made judiciously and only when justified by compelling operational needs and will be as narrowly tailored as possible.

Department of Defense Instruction (DoDI) 6205.02, "DoD Immunization Program," July 23, 2019, will be updated as follows to establish a process requiring the Secretary of a Military Department, the Director of a Defense Agency or DoD Field Activity that operates medical clinics, or the Commandant of the Coast Guard, to submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel. Effective immediately, I direct the following action:

Paragraph 2.11. of DoDI 6205.02 is revised by adding a new subsection g., which will read:

"Submit requests to the ASD(HA) for approval to initiate, modify, or terminate mandatory immunizations of personnel and voluntary immunizations of other eligible beneficiaries determined to be at risk from the effects of deliberately released biological agents or naturally occurring infectious diseases of military or national importance."

The Commander of a Combatant Command must submit a request for approval to initiate, modify, or terminate mandatory immunizations of personnel through the Joint Staff, consistent with existing processes specified in DoDI 6205.02.

The Director of Administration and Management will make the revision directed above as a conforming change to the version of DoDI 6205.02 published on the DoD Issuances website.

A handwritten signature in dark ink, appearing to read "Kathleen H. H.", is centered on the page. The signature is fluid and cursive, with a large initial 'K' and a stylized 'H'.

R 272043Z FEB 23 MID200080757493U

FM COMCOGARD PSC WASHINGTON DC

TO ALCGPSC

BT

UNCLAS

ALCGPSC 024/23

SUBJ: CORRECTING MILITARY RECORDS (COVID-19)

REF: (a) COMDT COGARD WASHINGTON DC 111557ZJAN23/ALCOAST 012/23

1. In accordance with reference (a), Personnel Service Center (PSC) is taking action to remove all CG-3307 Administrative Remarks Entries related to the COVID-19 vaccination mandate from the Coast Guard Military Human Resources Record for members currently serving on Active Duty or in the Reserve Component. The estimated completion date of this task is 31 March 2023.
2. Members whose military record still contains a CG-3307 related to the COVID-19 vaccination mandate after 31 March 2023 should contact their P&A shop to request removal.
3. Members who anticipate going before a board or panel in CY 2023 are encouraged to review their personnel record in iPERMS and work proactively with their P&A shop to ensure timely removal.
4. Procedures for requesting action on other personnel records that reference the COVID-19 vaccination mandate will be promulgated SEPCOR.
5. Released by: CAPT R. E. Dash, Acting Commander, Personnel Service Center, sends.
6. Internet release authorized.